

THE SUPREME COURT OF WASHINGTON

In re:

PAUL E. SIMMERLY,

An Attorney at Law.

) BAR NO. 10719

) SUPREME COURT NO. 200,967-1

) RESPONSE ON ORDER TO SHOW CAUSE

**ADDITIONAL STATEMENTS FROM OTHERS**

1. McKenna
2. McLachlen
3. Osborne, Brenda
4. Osborne, Donald
5. Volz

RECEIVED  
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STATE OF WASHINGTON  
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BY RONALD A. CARPENTER  
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ATTACHMENT TO EMAIL

Christine McKenna  
5677-193<sup>rd</sup> Pl. SE  
Issaquah, WA 98027  
425.241.4700

October 7, 2011

TO WHOM IT MAY CONCERN

Re: Paul Simmerly

I write on behalf of Paul Simmerly in connection with the proposal to disbar him for irregularities in an IOLTA account.

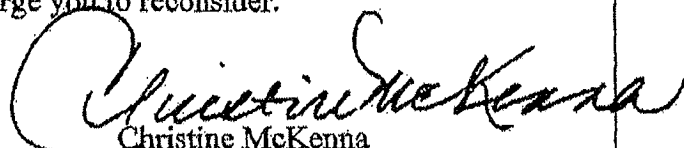
I am a former practitioner in Seattle, first as an Assistant U.S. Attorney, then in private practice for Bogle & Gates and Graham & Dunn. I was appointed a Federal Administrative Law Judge in 1990, working for the U.S. Department of Labor and later Energy in Washington, D.C. I left the legal field to enter seminary and currently work as a lay minister in my parish.

I have known Paul for several years through a mutual friend.

Although I am of course not privy to all the facts, my understanding of the gist of it is this:

- That investigation uncovered poor bookkeeping and two bounced checks, but no loss, theft, misuse, defalcation or funds unaccounted for.
- That all or virtually all of the complaints come from persons who were solicited by the bar. (I do not know a single attorney who has not had a client or two complain)
- That not a single person was harmed.
- That Paul has never had any complaints lodged against him previously.

As a retired practitioner and judge, I receive the Bar News every month and (like most of us) often turn to the disciplinary notices. I have seen disbarments for egregious matters, including criminal convictions, lying to the court, making off with clients' funds, and the like. I am puzzled by what seems to be a disproportionate, draconian penalty under the circumstances. I urge you to reconsider.

  
Christine McKenna  
WSBA #7042

**STATEMENT OF THOMAS H. McLACHLEN**

I understand that Paul E. Simmerly is being investigated for misconduct by the Washington State Bar Association. I wish to comment on Paul's character and abilities.

I worked with Paul Simmerly some 3 decades ago when he first became a lawyer and have remained in contact with him over the years. Despite the passage of time, I believe that my present comments regarding Mr. Simmerly are still both valid and probative, and should be considered by this Court.

I have seen the legal and judicial system from nearly every angle. During my career, I practiced law for a number of years and also was a businessman where I saw the legal and judicial system in the capacity of a "client". I have been involved in major litigation both as a lawyer and also as a client, personally and as an executive for a major NYSE listed company.

I experienced legal practice as a federal government attorney for several years, with a bank regulatory agency. I also worked for a small law firm, as a sole practitioner and as an in-house counsel.

I can say without reservation of any kind whatsoever that Paul Simmerly has always been a man of impeccable honesty, integrity and decency. A person can trust Paul Simmerly with his or her money, family or life. I cannot say the same for most people or lawyers that I have encountered. I have personally observed that Paul has exhibited the highest qualities of professionalism and dedication to his clients as a lawyer.

Mr. Simmerly took over a case from me titled deLisle v. FMC after it had been erroneously dismissed by the King County Superior Court because the court ruled that it had not been filed within the applicable two year statute of limitations. Paul obtained a reversal of that dismissal in the Court of Appeals, establishing that there was a three year statute of limitations

statute that applied in age discrimination cases. I then learned that the case was dismissed again and Mr. Simmerly once again obtained a reversal on appeal, this time establishing the criteria for how victims of age discrimination can defeat summary judgment motions. For this ten year legal battle, I understand that Mr. Simmerly received very little compensation. Few lawyers would have stuck it out that long for this client. These are qualities that the Bar Association should embrace for its membership – the highest qualities of dedication to a client's best interests and selflessness. It is my opinion that the public interest is greatly served by having individuals such as Paul Simmerly as bar members.

I believe that I speak from a unique vantage point because of my own experience in the legal profession and my daily exposure to Mr. Simmerly when we were both sole practitioners.

The general public (and the Bar Association) receives a great benefit from having a substantial number of sole practitioners available to meet the needs of the many clients who lack the financial resources to employ large law firms. Legal services provided by sole practitioners are generally less expensive, and therefore more readily available, to those in financial need, than the legal services from the large law firms where hours billed are the most important consideration.

In the case of Mr. Simmerly, I believe that during his career he has always provided exceptional legal services at a lower cost than many other attorneys possessing Paul's skill and experience. I understand that his present billing rate of \$200 per hour is well below the going rate for attorneys with his level of skill and experience. As I recall, Paul was the type of lawyer and person who will represent clients who lack the resources to pay fully for legal services.

From a practical standpoint, sole practitioners lack dedicated accounting or billing departments to support their legal practice, unlike large law firm attorneys who do not directly


handle trust accounts because this is handled by professional bookkeepers who do not practice law and whose only responsibility is to maintain the books of the firm. I am certainly not suggesting that the rules and standards for sole practitioners should be different, but I know the reality of a sole law practice is that many hats must be worn unlike big law firm counterparts.

It is my understanding that, after 4-1/2 years of intensive scrutiny of Mr. Simmerly's bookkeeping practices by the Bar Association, it was determined that his bookkeeping habits were in need of improvement, but at the end of the day no client funds were missing or misappropriated. It strikes me that shoddy bookkeeping procedures should be corrected going forward and perhaps warrants an admonishment or reprimand, but not suspension or disbarment, which would punish Mr. Simmerly's clients and not serve the interests of the public.

Thank you for considering these comments.

I CERTIFY UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATES OF WASHINGTON AND MARYLAND THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Rodkille, Maryland, this 7<sup>th</sup> day of October, 2011.

  
THOMAS H. McLACHLEN

STATEMENT OF BRENDA K. OSBORNE


TO WHOM IT MAY CONCERN:

I am writing this on behalf of Paul E. Simmerly, who I have known since the early 1980's. I have been employed as a legal assistant for almost forty years. I have worked for large firms, small firms and sole practitioners. I have substantial experience in all of the business elements that need to be balanced to make a law firm function.

In my forty years of experience, I have seen the work of hundreds of attorneys and believe that the public is greatly benefitted by Mr. Simmerly being an attorney. Suspending Mr. Simmerly from practice would be detrimental to the best interests of the public and would not serve any useful purpose. Mr. Simmerly has practiced law for more than 31 years and poses no threat to his clients or the general public. He is a man of the highest personal integrity and a credit to the legal profession.

I CERTIFY UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Glendale Valley Arizona, this 5<sup>th</sup> day of October, 2011.

  
BRENDA K. OSBORNE

## **STATEMENT OF DONALD P. OSBORNE**

### **To Whom it may concern:**

I am writing this letter on behalf of Paul E. Simmerly. I have read the Findings, Conclusions and Recommendations of the Hearing Officer and the Decision of the Disciplinary Board concerning Paul Simmerly.

I am an attorney licensed to practice law in the State of Washington. I have known Paul E. Simmerly since 1982, when he rented office space in the same suite where my solo law practice was located. Over what has been close to a thirty year period, I have known Paul to be a person who did not shirk his responsibilities, whether those responsibilities were connected to the legal profession and his clients, or to his family and friends. I believe that Paul E. Simmerly has always been an asset to the Bar on a steady and consistent basis and has always upheld the highest standards and traditions of the practice of law.

Paul has always taken on the legal problems of many individuals that a lesser attorney would have avoided, whether because of the complexity of the litigation or because of the limited resources of the client to pay for such services. On many occasions, Paul's clients received much more legal representation than they ever paid for and Paul absorbed these losses.

Like Paul (since 1982), I have always been a sole practitioner and, as such, am fully aware of the long list of tasks that a sole practitioner must fulfill, to keep his practice viable, with little or no backup. Accounting and billing are areas that are necessities that generally absorb many non-billable hours, but still must be done.

Outside the practice of law, Paul also had the responsibilities of being a father of two surviving-triplet boys (and a single father after his divorce), one of whom is disabled. His boys were born severely premature at 24 weeks, weighing 1-3/4 pounds each. Paul and his wife were told by doctors at their birth that they might have serious disabilities, perhaps so great that they would be profoundly disabled. Despite these obstacles, one of Paul's sons, Joel, graduated from high school with a 3.95 GPA and is beginning his sophomore year at the UW. He has already been accepted into the UW Business School. Paul's other

son, Alex, despite suffering from the effects of cerebral palsy and with Paul's guidance, was able to play youth sports, including four seasons of Little League baseball, and is a community college student. Paul's two boys benefitted greatly from his steadfast support of them, as Paul was actively involved as their volunteer Cub Scout Cub Master, their volunteer coach in numerous sports programs and their school activities. Many other parents and their children also benefitted from Paul's involvement. As a swim coach and instructor for ten years from 1971 through 1980 in Bellevue, Mercer Island and Renton, Paul has influenced and benefitted the lives of several thousand children in aquatics and many of these children have in turn grown up to influence and benefit their own children by involving them in aquatics. Paul has served for three years on the Board of Directors for the Kinderling Center, a facility for disabled children in Bellevue.

As Paul's current problems with the Bar are contemplated, it strikes me that considerations of proportionality need to be applied here. Intensive forensic accounting of Paul's Trust Account was conducted over four years and no money belonging to any client was missing. I do not believe that any attorney in the Washington State Bar could have withstood such an intensive audit without problems being found and I understand that Chief Auditor Rita Swanson so testified at Mr. Simmerly's Hearing.

Paul is a tremendous asset to the Bar, to family and friends and the community at large. Paul still actively parents his boys, takes great care of his 89 year-old mother, and ably represents a long list of clients. All will be heavily impacted by suspending Paul from practicing law. Proportionality should be the guiding light here. No suspension is appropriate. Paul has already been greatly punished by the tremendous physical and emotional toll this matter has taken on him during the 4-1/2 years this matter has gone on to date. He has had to pay legal expenses and his practice has been negatively impacted by the continuous investigation and interrogation of his clients (many who are now former clients) by the Bar. He has devoted hundreds of hours to this matter which obviously disrupts his income-earning ability. I understand that Paul has stated that he has supplied every Trust Account record and every financial source document that the Bar has requested. If this is true, I do not see how it can be claimed that he is guilty of making any misrepresentations to the Bar.




I have reviewed the legal work performed by Mr. Simmerly on the litigation matters involved in this Disciplinary Proceeding. Mr. Simmerly's legal work was exceptional. I find it ironic that Mr. Simmerly is being disciplined over his representation of clients when his work for them was first rate and performed under incredibly difficult circumstances and the results achieved were everything that the clients wanted and, in some cases, more than they should have received. I find it incomprehensible that Mr. Simmerly faces this kind of disciplinary action over matters like the Dominique Glaub case (putting a \$3,000 retainer into his general account too soon when he incurred total fees of around \$30,000 which were not paid) or the Selena Rushton case (where the client approved the settlement accounting prior to the distribution).

Mr. Simmerly is a lawyer of the highest integrity and honesty. He should not be suspended.  
Thank you.

I CERTIFY UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON  
THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Pellene, Washington, this 16<sup>th</sup> day of October, 2011.

  
DONALD P. OSBORNE

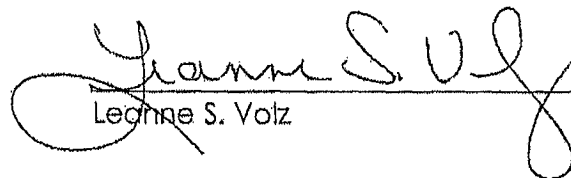
# STATEMENT OF LEANNE S. VOLZ

I was Paul Simmerly's legal assistant during the time period October, 1997 to May, 2007. I have over 20 years of experience working with attorneys within the State of Washington following graduating from Edmonds Community College with an ASA in Legal Assistant Studies in 1987.

Working for Paul was a pleasure. He is an attorney who will always go the extra mile for his clients. In the ten years that I worked for Paul he was always concerned about the high costs that other attorneys charged for the same services he performed. He strived to keep his fees low and tried to avoid incurring unnecessary fees whenever possible. During the years that I worked for Paul I never received any complaints from any client regarding his fees or billing practices. I never received a single complaint from any client regarding any aspect of the legal services rendered by Paul nor any complaints regarding Paul's honesty or integrity. I typed up hundreds of bills for Paul during those ten years. In my opinion, on many occasions, he did would not bill enough for his services. Paul has always put his clients needs ahead of his financial interest.

Paul is a hardworking attorney who puts the desires of his clients above all else. He was always respectful and polite to both me and his clients as well as other attorneys. Paul is definitely an asset to the legal community and suspending his license would be to the detriment of his current clients and any future clients who need a representative who will strive to do everything possible to help. That is a trait that I have always admired in Paul.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct. Signed at Duvall, Washington this 26<sup>th</sup> day of September, 2011

  
Leanne S. Volz

## OFFICE RECEPTIONIST, CLERK

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**To:** Kurt Bulmer  
**Cc:** Joanne Abelson  
**Subject:** RE: In re Simmerly, Supreme Court No. 200,967-1

Rec'd 10/10/2011

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Kurt Bulmer [<mailto:kbulmer@comcast.net>]  
**Sent:** Monday, October 10, 2011 7:19 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Joanne Abelson  
**Subject:** In re Simmerly, Supreme Court No. 200,967-1

Please file and deliver the enclosed additional statements in support in In re Simmerly set for oral argument tomorrow. Thank you.

Kurt Bulmer

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